



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,461	02/23/2004	Heinz Plank	LVIP:111 US	8252

7590 11/09/2006
HOWARD M. ELLIS
SIMPSON & SIMPSON, PLLC
5555 Main Street
Williamsville, NY 14221

EXAMINER

BUI, LUAN KIM

ART UNIT	PAPER NUMBER
----------	--------------

3728

DATE MAILED: 11/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/784,461

Applicant(s)

PLANK, HEINZ

Examiner

Luan K. Bui

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Drawings

1. The drawings were received on 9/28/2006. These drawings are approved by the Examiner.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6 and 9-11 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Kato et al. (6,179,127; hereinafter Kato'127) or Nakazono et al. (6,296,122; hereinafter Nakazono'122) in view of Chenoweth (6,076,681) and Bloom (6,293,404). Kato'127 discloses a carrier/container (1) comprising a peripheral delimiting wall (22) which is constituted by a left and a right sidewall that are both joined to one another via a back wall and a front wall, a base (Figures 11-12 and 16) is attached to the peripheral delimiting wall, at least one peripheral step (31b, 62) formed in the interior side of the peripheral delimiting wall of the carrier/container for holding an article (51). Kato'127 further discloses at least one protrusion (63, 64) formed in the left or the right sidewall. Nakazono'122 discloses a tray/container (1) comprising a peripheral delimiting wall which is constituted by a left and a right sidewall that are both joined to one another via a back wall and a front wall, a base (6) is attached to the peripheral delimiting wall, at least one peripheral step (3, Figures 1 and 2) formed in the interior of the tray/container for holding an article (2) spaced away from the base. The tray of Nakazono'122 formed from a

Art Unit: 3728

thermoplastic material which is considered equivalent to a dimensionally stable material as claimed. Either Kato'127 or Nakazono'122 also discloses the other claimed limitations except for the base comprises elevations being operatively arranged for providing additional support for the article.

Chenoweth shows a carrier (10) comprising at least one corner support (18, 19, 21, 22) for supporting an article (24, 25) and at least one elevation (42, 43) for supporting a bottom surface of the article to providing an additional support for the article. Bloom suggest a carrier (100) having a first and a second elevation (134, Figure 10) with cup-shaped for supporting a bottom surface of an article.

It would have been obvious to one having ordinary skill in the art in view of Chenoweth and Bloom to modify the container of Kato'127 or Nakazono'122 so the base includes elevations comprise a first and second elevation of cup-shaped for supporting the article for further supporting the article within the container.

As to claim 2, Kato'127 discloses the at least one peripheral step is continuous (Figures 11-12).

As to claim 3, Nakazono'122 discloses at least one stop (11a).

As to claim 11, the container of Nakazono'122 formed by molding. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the container of Nakazono'122 by injection because the selection of the specific method for forming the container would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well.

Art Unit: 3728

4. Claim 7 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of The Official Notice and Anthony et al. (2002/0029989; hereinafter Anthony'989). The container of Kato'127 or Nakazono'122 as modified further fails to show two grip recesses in the region of the front wall. The Official Notice is taken of the old and conventional practice of providing a container having two grip recesses to facilitate carrying the container. Anthony'989, is cited by way of example only, shows a container (10) comprising two grip recesses (28) arranged opposite one another (Figure 1). It would have been obvious to one having ordinary skill in the art in view of The Official Notice and Anthony'989 to modify the container of Kato'127 or Nakazono'122 so in the region of the front wall comprises two grip recesses to facilitate carrying and/or holding the container.

5. Claim 8 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Lafond et al. (6,446,807; hereinafter Lafond'807) or Burton et al. (5,310,076; hereinafter Burton'076). The container of Kato'127 or Nakazono'122 as modified further fails to show the back wall comprises two parallel lugs that serve partially as guides for arranging the container in the stack. Lafond'807 shows a container (12) having two parallel lugs (38, 44) that serve partially as guides for stacking the container. Burton'076 suggests a container (100) having two parallel lugs (103, 107) that serve partially as guides for stacking the container. It would have been obvious to one having ordinary skill in the art in view of Lafond'807 or Burton'076 to modify the container of Kato'127 or Nakazono'122 so in the region of the back wall includes two parallel lugs to facilitate stacking the container.

6. Claim 12 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Nakazono et al. (6,296,122; hereinafter Nakazono'122) in view of The Official Notice and Anthony et al. (2002/0029989; hereinafter Anthony'989). Nakazono'122 discloses a tray/container (1) comprising a peripheral delimiting wall which is constituted by a left and a right sidewall that are both joined to one another via a back wall and a front wall, a base (6) is attached to the peripheral delimiting wall, at least one peripheral step (3, Figures 1 and 2) formed in the interior of the tray/container for holding an article (2) spaced away from the base. However, Nakazono'122 fails to show a grip recess being formed in the left and the right sidewall. The Official Notice is taken of the old and conventional practice of providing a container having two grip recesses to facilitate carrying and/or holding the container. Anthony'989, is cited by way of example only, shows a container (10) comprising two grip recesses (28) arranged opposite one another (Figure 1). It would have been obvious to one having ordinary skill in the art in view of The Official Notice and Anthony'989 to modify the container of Nakazono'122 so the left and right sidewall comprises a grip recess to facilitate carrying and/or holding the container.

7. Claim 13 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Nakazono et al. (6,296,122; hereinafter Nakazono'122) in view of Lafond et al. (6,446,807; hereinafter Lafond'807) or Burton et al. (5,310,076; hereinafter Burton'076). Nakazono'122 discloses a tray/container (1) comprising a peripheral delimiting wall which is constituted by a left and a right sidewall that are both joined to one another via a back wall and a front wall, a base (6) is attached to the peripheral delimiting wall, at least one peripheral step (3, Figures 1 and 2) formed

Art Unit: 3728

in the interior of the tray/container for holding an article (2) spaced away from the base.

However, Nakazono'122 fails to show two parallel lugs being formed at the back wall which serve as guide for arranging the transport container in a stack.

Lafond'807 shows a container (12) having two parallel lugs (38, 44) that serve partially as guides for stacking the container. Burton'076 suggests a container (100) having two parallel lugs (103, 107) that serve partially as guides for stacking the container. It would have been obvious to one having ordinary skill in the art in view of Lafond'807 or Burton'076 to modify the container of Nakazono'122 so in the region of the back wall includes two parallel lugs to facilitate stacking the container.

8. Claim 14 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Kato et al. (6,179,127; hereinafter Kato'127) in view of Gutsche et al. (3,469,686; hereinafter Gutsche'686). Kato'127 discloses a carrier/container (1) comprising a peripheral delimiting wall (22) which is constituted by a left and a right sidewall that are both joined to one another via a back wall and a front wall, a base (Figures 11-12 and 16) is attached to the peripheral delimiting wall, at least one peripheral step (31b, 62) formed in the interior side of the peripheral delimiting wall of the carrier/container for holding an article (51). Kato'127 further discloses at least one protrusion (63, 64) formed in the left or the right sidewall (Figure 16-17) and the peripheral step is continuous (Figure 11-12). However, Kato'127 fails to show the peripheral continuous step comprises a plurality of continuous peripheral steps.

Gutsche'686 teaches a container (1) comprising at least one well (3) for supporting an article and the at least one well having a plurality of continuous peripheral steps (5, 7) for supporting

Art Unit: 3728

various sizes of the article. It would have been obvious to one having ordinary skill in the art in view of Gutsche'686 to modify the container of Kato'127 so the at least one peripheral step comprises a plurality of continuous peripheral steps to allow the container to support various sizes of the article.

Response to Arguments

Applicant's arguments with respect to 9/28/2006 have been considered but are deemed to be moot in view of the new grounds of rejection.

Applicant's arguments with respect to Kato'127 in the remarks are noted. They are not persuasive because the invention of Kato'127 is prevented the electrodes (Sa) from contacting the bottom surface of the container. Chenoweth shows elevations to prevent the leads (26) from contacting the bottom surface of the container. There does not appear to be anything unobvious about using the teaching of Chenoweth or Bloom to modify the container of Kato'127 or Nakazono'122 so the base includes elevations for supporting the bottom surface of the article for further protecting the article within the container.

Applicant's argument with respect to The Official Notice in the remarks is noted. This is not persuasive because such container, for example Anthony et al. (see above), is provided.

The claims appear to have merely combined a number of desirable prior art features each doing in the combination that for which it was already well known in the prior art.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Conclusion

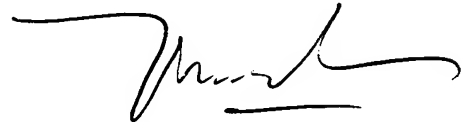
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. **The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for Formal papers and After Final communications.**

Art Unit: 3728

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb
November 8, 2006



Luan K. Bui
Primary Examiner
Art Unit 3728